

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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JULIAN VALENZUELA,

Plaintiff,

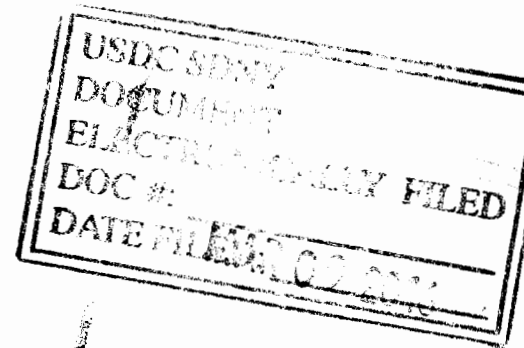
-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.  
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ORDER

14-cv-07380 (GBD) (FM)



GEORGE B. DANIELS, District Judge:

*Pro se* Plaintiff Julian Valenzuela brought this action pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), seeking review of a final decision of the Commissioner of Social Security denying his application for disability insurance benefits and supplemental security income. (Complaint, (ECF No. 1).) This Court referred the case to Magistrate Judge Maas. (Order Referring Case to Magistrate Judge, (ECF No. 6).)

The Commissioner then filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Motion to Dismiss for Failure to State a Claim, (ECF Nos. 12-14).) On December 30, 2015, Magistrate Judge Maas issued a report recommending dismissal of the Complaint because Plaintiff failed to commence this action within the sixty-day time limit prescribed by 42 U.S.C. § 405(g) to challenge the Commissioner's final decision to deny Plaintiff benefits. (Report and Recommendation ("R&R"), (ECF No. 20), at 5-6.) The R&R stated that failure to object within fourteen days would preclude appellate review. (*Id.* at 6-7.) The docket

indicates that the R&R was mailed to Plaintiff on December 30, 2015. No objections have been filed.


Courts “may accept, reject, or modify, in whole or in part, the findings and recommendations” set forth within a magistrate judge’s report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Courts must review *de novo* the portions of a magistrate judge’s report to which a party properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir.2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears here.

The Court adopts the findings and recommendation set forth in the R&R. Accordingly, the Commissioner’s motion is GRANTED, and the Complaint is DISMISSED.

The Clerk of Court is directed to close the above-captioned action.

Dated: March 9, 2016  
New York, New York

SO ORDERED.

  
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GEORGE B. DANIELS  
UNITED STATES DISTRICT JUDGE